IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11881 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRAN L PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11881 of 2004

MR DIPEN K DAVE for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 20/04/2005

ORAL JUDGEMENT

RULE. Learned AGP, Mr.Hasurkar, waives service of notice of rule on behalf of the respondents. At the

joint request of learned advocates appearing for the parties, this matter is taken up for final disposal today.

In the present petition, the petitioner has challenged the order dated 1-3-2004 by which his request for being considered for appointment on compassionate grounds came to be turned down.

Father of the petitioner, who was working with the State Government as a Clerk-cum-typist expired while in service on 17-6-1993. On account of death of the Government servant, his widow, i.e. mother of the present petitioner applied for being appointed on compassionate grounds. This application, however, came to be rejected, apparently on the ground that she was not qualified educationally for being appointed on any post. The petitioner, who was minor at the time of death of his father applied shortly after attaining majority in the year 1998 by his application dated 30-7-1998 for compassionate appointment. After some correspondence and representations, the application of the petitioner came to be turned down by the impugned order dated 1st March, 2004. In the impugned order, it is stated that the case of the mother of the petitioner is recommended by the respondents for compassionate appointment, which is also communicated to her on 20th December, 2003 and that, therefore, it is not possible to accept the request of the petitioner for being granted compassionate appointment.

The stand of the respondents is not in consonance with the Government policy. At the relevant time, the mother of the petitioner applied in the year 1993. Her request was turned down on the ground that she is not qualified. From the communication dated 26-2-1997, which is produced by the learned AGP, it is clear that as far back in the year 1991, the Government policy permitted the eldest minor child of the deceased Government servant to apply for compassionate appointment within a period of two years of attaining majority, if the widow of the deceased Government servant was not qualified to seek appointment. In the present case, therefore, the petitioner was justified in applying for compassionate appointment in the year 1998 on reaching the age of 18 years. Strangely, the request of the petitioner came to be turned down on the ground that the case of the mother of the petitioner is recommended for appointment. It is stated that the widow has now reached the age of 55 years.

Quite apart from the fact that her earlier request was turned down in the year 1993, when she has reached the age of 55 years no useful purpose will be served in considering her case for compassionate appointment when she has virtually reached the age of retirement. The respondents earlier having found that the mother of the petitioner is not qualified to seek compassionate appointment, as per the Government policy it was open for him to apply on attaining majority which he did. His application, therefore, could not have been rejected on the above mentioned grounds. Impugned order Annexure-A dated 1st March, 2005, is therefore quashed and set aside. Respondents are directed to consider the case of the petitioner for compassionate appointment on merits and take a just decision. Such a decision shall be taken within a period of three months from the date of receipt of copy of this order. Rule is made absolute accordingly. No order as to costs.

(AKIL KURESHI, J.)
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